HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION Nos.4121, 4141, 4144 and 5776 of 2006

W.P.No.4121 of 2006

Between:

K. Anjana Devi & 45 others

… Petitioners

AND

Government of A.P., rep., by its Principal Secretary,
Revenue Department, Secretariat, Hyderabad & others.

… Respondents

Counsel for the Petitioners : Mr. D. Prakash Reddy for
Mr. C.V. Bhaskar Reddy

Counsel for the Respondent Nos.1to3: Advocate General
Counsel for the Respondent No.4 : Mr. A.Saran, Addl. Solicitor General

W.P.No.4141 of 2006

Between:

Ahmed Abdul Aziz & 14 others

… Petitioners

AND

Government of A.P., rep., by its Principal Secretary,
Revenue Department, Secretariat, Hyderabad & others.

… Respondents

Counsel for the Petitioners : Mr. B.Adinarayana Rao

Counsel for the Respondent Nos.1to3: Advocate General

Counsel for the Respondent No.4 : Mr. G.E.Vaharvati,
Solicitor General of India

W.P.No.4144 of 2006

Between:

Omprakash Verma & 43 others
… Petitioners

AND

Government of A.P., rep., by its Principal Secretary,
Revenue Department, Secretariat, Hyderabad & others.
… Respondents

Counsel for the Petitioners : Mr. K.Rajendra Chowdary

Counsel for the Respondent Nos.1to3: Advocate General
Counsel for the Respondent No.4 : Mr. G.E.Vahanvati,
Solicitor General of India

W.P.No.5776 of 2006

Between:

Chanakyapuri Cooperative Housing Society Ltd.
… Petitioner

AND

Government of A.P., rep., by its Principal Secretary,
Revenue Department, Secretariat, Hyderabad & others.
… Respondents

Counsel for the Petitioner : None

Counsel for the Respondents : None

Dated: January 17, 2006

: COMMON ORDER :

PER C.V.NAGARJUNA REDDY, J

The four writ petitions involve common issues. Hence, they are being disposed of by a common order.

Writ Petition No.4121 of 2006 has been filed by Smt. K. Anjana Devi and 45 others, who claim to be the purchasers of small extent of land forming part of Survey No.83 of Raidurg (Panmaktha) village, Serilingampally Mandal, Ranga Reddy District. They claim to have purchased the said extents from the General Power of Attorney holder of the original landowners (hereinafter referred to as declarants).

W.P.No.4144 of 2006 has been filed by Omprakash Verma and 43 others, who also claim to be purchasers of small extent of land forming part of Survey No.83 of Raidurg (Panmaktha) Village, Serilingampally Mandal, Ranga Reddy District from the said General Power of Attorney.

W.P.No.4141 of 2006 has been filed by Ahmed Abdul Aziz and 14 others, who claim to be the owners of the land of an extent of Acs.526.07 guntas in Survey No.83 of Raidurg (Panmaktha) Village, Serilingampally Mandl, Rangareddy District (declarants).

W.P.No.5776 of 2006 has been filed by the Chanakyapuri Cooperative Housing Society Limited, Secunderabad, which claims to be the holder of Agreement of Sale dated 09.08.1974 allegedly executed by the G.P.A. holder of the owners of the land in Survey No.83 of Raidurg (Panmaktha) Village, Serilingampally Mandal, Rangareddy District.

The petitioners have questioned the validity of G.O.Ms.No.161, Revenue (UC-II) Department, dated 13.02.2006 and prayed for quashing of the same with a direction to the official respondents to consider their claim for grant of exemption under various Government Orders viz., G.O.Ms.No.733, Revenue (UC-II) Department, dated 31.10.1988 as clarified in G.O.Ms.No.217, Revenue (UC-II) Department, dated 18.04.2000, G.O.Ms.No.455, Revenue (UC-I) Department, dated 29.07.2002 and G.O.Ms.No.456, Revenue (UC-I) Department, dated 29.07.2002.

FACTS:

The factual matrix of these cases can be broadly placed into four categories viz., (1) Proceedings under A.P. Land Reforms (Ceiling on Agricultural Holdings) Act 1973 (for short "the 1973 Act"), (2) Proceedings under Urban Land (Ceiling & Regulation) Act 1976 (for short "the 1976 Act"), (3) the previous litigation and (4) the present writ petitions.

(1) PROCEEDINGS UNDER 1973 ACT:-

Petitioners in W.P.No.4141 of 2006 filed declarations on 11.04.1975 under Section 8(1) of the 1973 Act. The Land Reforms Tribunal, Hyderabad (West) (for short "the Tribunal") passed an order

dated 02.06.1976 in C.C.No.632/W/75 holding that Sri Ahmed Abdul Aziz, S/o. Janab Mohammed Rukmuddin Ahmed was having excess land equivalent to 0.4612 standard holdings. Another order was passed by the Tribunal on 16.06.1976 holding that Sri Md. Rukmuddin Ahmed, S/o. Nawab Aziz Jung held excess land equivalent to 1.191 standard holdings. In furtherance of those orders, the possession of the excess land was taken by the State.

On 16.07.1980, Sri A.Ramaswamy, G.P.A. holder of the declarants filed a petition before the Lands Reforms Tribunal *inter alia* stating that after surrendering the excess land of an extent of Acs.99-32 cents, the authorities under the 1976 Act, after holding enquiry, held that the entire area of Acs.525-31 cents held by the 12 declarants in Sy.No.83 of Raidurg Village is vacant land liable to be taken over under the provisions of the 1976 Act and that in view of the law declared by the High Court of Andhra Pradesh that where the provisions of the 1976 Act are applied in respect of any land treated as vacant land, the same land should be treated as agricultural land. In the said petition, an unequivocal statement was made that since the land in Sy.No.83 was treated as vacant land under the provisions of the 1976 Act, the provisions of the 1973 Act are not applicable. It was therefore requested in the said petition to release the extent of Ac.99-32 cents of land to the land owners immediately. The said request having been rejected by the Tribunal on 19.04.1982, four appeals viz., LRA.Nos.6/83, 15/83, 16/83 and 45/83 were filed before the Land Reforms Appellate Tribunal-cum-District Judge, Ranga Reddy. The appeals were disposed of together by the appellate tribunal vide its order dated 22.09.1984. The appellate tribunal held that in the

absence of any material produced, it cannot be positively held that the lands are to be treated as vacant lands falling under the 1976 Act and that the said issue cannot be decided in the said appeals straight away. The appellate tribunal, therefore, allowed the appeals and remanded the matters to the Land Reforms Tribunal for fresh disposal. After remand, the Tribunal, vide its order dated 10.11.1987, while accepting the plea of the declarants that the entire land was vacant land falling under the provisions of the 1976 Act, directed that the extent of

Acs.99-17 cents of land in Sy.No.83 shall revert back to the land owners. The Revenue Divisional Officer, Chevella Division was requested to deliver back the possession of the said lands to the declarants. Accordingly, on 25.04.1990, the possession of the said extent of land was delivered to the declarants through their G.P.A., Sri A.Ramaswamy under a panchanama.

(2) PROCEEDINGS UNDER 1976 ACT:-

Individual statements in Form-I were filed on behalf of the owners of the land under Section 6(1) of the 1976 Act by the G.P.A. holder wherein the land in dispute was described as “vacant land”. The Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad, issued draft statements under Sections 8(1) and 8(3) of the 1976 Act on 01.07.1977 and 11.11.1977 respectively calling for objections. No objections were filed by the declarants or any other person interested in the land. Thereafter, the final statement in Form-III under Section 9 of the 1976 Act was issued on 6-12-1979. This was followed by a publication of notices under Section 10(1) in A.P. Gazette No.19 on 16.01.1980. Notices to surrender the excess land were published in official Gazette No.31 Part-I Extraordinary dated

30.01.1980.

In the meanwhile, the GPA of the declarants filed application under Section 20 (1)(a) of the 1976 Act. He pleaded that the land owners through their G.P.A. entered into an agreement on 09.08.1974 with M/s. Chanakyapuri Cooperative Housing Society Limited, Hyderabad for alienation of 16,18,800 square meters in Sy.No.83 of Raidurg and received an amount of Rs.50,000/- in cash towards earnest money on the date of the agreement and that in pursuance of the said agreement, the said society has paid an amount of Rs.1,98,000/- in ten instalments towards part performance of the agreement of sale before the commencement of the 1976 Act out of the total amount of Rs.3,32,900/- paid at the time of making exemption application. It was also pleaded in the exemption application that the layout was sanctioned by the Sarpanch, Grampanchayat, Raidurg in the year 1975.

After finalization of the surplus area case, the State Government issued G.O.Ms.No.391, Municipal Administration, dated 23.06.1980 revising the master plan for Hyderabad urban area with effect from 29.09.1980. State Government also issued G.O.Ms.No.5013, Revenue, dated 19.12.1980, *inter alia*, allotting the surplus land of the land owners admeasuring 18,94,472 square meters to Hyderabad Urban Development Authority. Notification under Section 10(3) of the 1976 Act was published on 24.01.1981 declaring that the property is deemed to have been acquired by the State Government and vested absolutely in the State Government free from all encumbrances with effect from January, 1981. As a sequel to this, the State Government vide its order dated 21-2-1981 rejected the application filed by the GPA of the land owners under Section 20 (1). Thereafter, on

26.02.1981, a notification under Section 10(5) of the 1976 Act was issued calling upon the G.P.A. to deliver the possession of the land before 5th of March 1981.

(3) PREVIOUS LITIGATION:-

Feeling aggrieved by the said rejection of exemption, the Chanakyapuri Cooperative Housing Society Limited (for short "the society"), the petitioner in W.P.No.5776 of 2006, filed W.P.No.1290 of 1981, which was dismissed by the learned Single Judge vide his order dated 16-7-1983. The learned Single Judge held that the agreement of sale held by the said society was in violation of Section 5 of A.P. Vacant Land in Urban Areas (Prohibition and Violation) Act, 1972 and that the society did not have a valid title. The learned Single Judge further held that the possession of the society is wholly unlawful and can neither be recognized nor protected in law.

Writ Appeal No.649 of 1983 preferred by the society was dismissed by the Division Bench on 13-8-1983 with an observation that the land owners and the appellant should have filed appeal against the rejection of application filed under Section 20 (1) of the 1976 Act. Thereafter, the society filed an appeal before the Commissioner of Land Revenue. The same was dismissed on 1-12-1992. Writ Petition No.16792 of 1992 filed by the society against the order of the Commissioner of Land Revenue was summarily dismissed by the learned Single Judge and Writ Appeal No.806 of 1993 filed against that order was dismissed by the Division Bench on 1-10-1993. SLP Nos.5739 and 5740 filed against the order of the Division Bench were dismissed by the Supreme Court on 28-3-2001.

In the meanwhile, possession of the entire excess land was

handed over to Mandal Revenue Officer, Sharlingampally, Ranga Reddy District.

One K.Ashok Rao and 70 others claiming to be the purchasers of small extents of the surplus land in dispute filed W.P.No.18385 of 1993 seeking several reliefs including the one for declaration that the land in Sy.No.83 of Raidurg village is neither urban land nor vacant land within the meaning of the 1976 Act and that the same is not liable for determination or being dealt with under the provisions of the said Act and also for a declaration that all the proceedings taken under the 1976 Act were void *ab initio* and without jurisdiction. The learned Single Judge relied on the ratio of the judgment of the Supreme Court in **SMT. ATHIA MOHAMMADI BEGUM v. STATE OF U.P.**[1] and quashed the proceedings held under the 1976 Act by observing that till 29.09.1980 when the revised master plan came into operation, the disputed land was an agricultural land. However, liberty was given to the respondents to take further action in accordance with law. Writ Petition No.238 of 1994 filed by another set of 116 persons claiming to be purchasers of small extents of surplus land was disposed of by the learned Single Judge on 6-10-1994 in terms of the order passed in Writ Petition No.18385 of 1993. Writ Appeal Nos.918 and 1220 of 1994 preferred against the aforementioned orders of the learned Single Judge were dismissed by the Division Bench.

The State Government challenged the orders and judgments of the Single and Division Benches by filing petitions to Special Leave for Appeal before the Supreme Court. After grant of leave, the same were registered as Civil Appeal Nos.3813 of 1996 and 7239 of 2001. The Supreme Court allowed the appeals and held that the judgment of **SMT. ATHIA MOHAMMADI BEGUM** (supra) does not lay down

correct law.

(4) PRESENT WRIT PETITIONS:-

The declarants (land owners), who did not challenge the rejection of exemption application filed by society and the proceedings initiated under the 1976 Act and orders passed therein, came on the scene in November 2003 when they made representation dated 28-11-2003 on their own behalf and also on behalf of the purchasers to the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad for recomputation of their holding as on 23-6-1980 i.e. the day on which the revised Master Plan was published. They relied on the judgment of the Supreme Court in **STATE OF A.P. v. AUDIKESAVA REDDY**[2], judgment dated 22-11-2002 passed in O.S.No.71 of 2001 whereby the trial Court dismissed the suit filed by Collector, Hyderabad claiming the land in dispute as government land and G.O.Ms.No.733 Revenue (UC-II) Department dated 31.10.1988 as clarified in G.O.Ms.No.289 MA & UD Department dated 01.06.1989 read with G.O.Ms.No.217, Revenue (UC-II) Department dated 18.04.2000. The declarants also averred that in the event of there being any surplus land, they will retain the same by paying compensation in terms of G.O.Ms.Nos.455/456, Revenue (UC-I) Department dated 29.07.2002. A similar representation was made to the Special Chief Secretary to Government, Revenue (UC-II) Department. However, neither of the authorities responded to the representation of the declarants. On its part, the State Government issued G.O.Ms.No.161, Revenue (UC-II) Department, dated 13.02.2006 allotting the excess of land of Acs.424-13 guntas in Sy.No.83 of Raidurg Village, Serilingampally Mangal, Ranga Reddy

District to A.P. Industrial Infrastructure Corporation Limited, Hyderabad for utilizing the same for setting up integrated I.T. park project. It is this G.O., which has been challenged in the writ petitions.

THE ARGUMENTS:

Shri K.Rajendra Chowdary, Senior Advocate appearing for the petitioners in Writ Petition No.4144 of 2006, Shri D. Prakash Reddy, Senior Advocate appearing for the petitioners in Writ Petition No.4121 of 2006 and Shri B. Adinarayana Rao, learned counsel appearing for the petitioners in Writ Petition No.4141 of 2006 argued that the judgment of the Supreme Court in **STATE OF A.P. v. AUDIKESAVA REDDY** (supra) does not have the effect of nullifying the findings recorded by the learned Single Judge in Writ Petition Nos.18385 of 1993 and 238 of 1994 and by the Division Bench in Writ Appeal Nos.918 and 1220 of 1994 because three Judges Bench of the Supreme Court dealt with purely legal issue referred by the two Judges Bench and did not go into the factual matrix of the appeals. They submitted that the findings recorded by the learned Single Judge in Writ Petition Nos.18385 and 238 of 1994, which were confirmed by the Division Bench in Writ Appeal Nos.918 and 1220 of 1994 were not reversed by the Supreme Court and, therefore, the same are binding on the respondents and they are bound to decide the surplus area case of the land owners afresh under the 1976 Act by taking into consideration the situation as on the date of enforcement of revised master plan i.e. 29-9-1980. Learned counsel emphasized that the learned Single Judge as well as the Division Bench had unequivocally held that the land in dispute continued to be an agriculture land and as this finding has not been reversed by the Supreme Court in **STATE OF A.P. v. AUDIKESAVA REDDY** (supra), the surplus area case of the

land owners is required to be decided afresh. Learned counsel for the petitioners relied on the judgment of the Supreme Court in **KUNHAYAMMED v STATE OF KERALA**[3] to contend that since the only 'lis' disposed of by the Supreme Court in **STATE OF A.P. v. AUDIKESAVA REDDY** (supra) pertains to the correctness or otherwise of the ratio in **ATHIA MOHAMMADI BEGUM** (supra), the entire judgment of this Court cannot be said to have got merged in the judgment in **STATE OF A.P. v. AUDIKESAVA REDDY** (supra). Learned counsel also relied on the judgment of the Apex Court in **STATE OF U.P. v SYNTHETICS AND CHEMICALS LIMITED**[4] to contend that what was merged in the appellate judgment of the Supreme Court is only the finding of the Division Benches that the master plan existing on the date of commencement of the Act alone is relevant for the purpose of determination of the nature of the land. Learned counsel also relied on the judgment of the Apex Court in **ISLAMIC ACADEMY OF EDUCATION v STATE OF KARNATAKA**[5] wherein it was held that the ratio decidendi of the judgment has to be found out only on reading the entire judgment and the ratio has to be culled out in the context of what is set out in the judgment and not by reading a line here and there from the judgment.

Shri K. Rajendra Chowdary submitted that the 1976 Act became applicable to Survey No.83 only with effect from 29.09.1980 when the amended master plan came into force and, therefore, any determination of the surplus land on the basis of declarations filed by the owners under a mistaken impression under Section 6(1) of the Act in the year 1976 and the preparation of draft statement under Section 8(1), publication of final statement under Section 9, publication of notification under Section 10(3) purporting to vest the land in the State

and consequent notices under Sections 10(5) and (6) of the Act are without jurisdiction and, therefore, void. Learned counsel then argued that the statement contained in

para 3 of G.O.Ms.No.161 that the land is deemed to have been vested in the State under Section 10 (3) is incorrect and, in view of the judgment of the Supreme Court in Supreme Court in **STATE OF A.P. v. AUDIKESAVA REDDY** (supra), the competent authority is duty bound to compute the excess land afresh in accordance with law and till that is done, the land comprised in Survey No.83 cannot be treated as having got vested in the State Government. Learned counsel further argued that the State Government in its appeals before the Larger Bench of the Supreme Court neither raised the contentions regarding correctness or otherwise of the findings of the High Court nor invited the Court to pronounce any judgment on these findings. According to the learned counsel, the finding recorded by the two Division Benches of this Court attained finality and, therefore, are binding on the State Government and its competent authority and they cannot now be permitted to re-agitate the same questions again in these writ petitions. According to the learned counsel, as the land in dispute became "vacant land" with effect from 29.09.1980, the orders passed in the proceedings taken by the competent authority under Sections 8, 9 and 10(3) of the 1976 Act treating 17.02.1976 as the date of commencement of the Act in relation to the disputed land is void *ab initio*. The State Government, according to the learned counsel, failed to sustain the reasons on which the impugned G.O. i.e., G.O.Ms.No.161 was passed and relied on the judgments of the Supreme Court in **MOHINDER SINGH GILL v. CHIEF ELECTION COMMR.**[6], **K.K. BHALLA v STATE OF M.P**[7] and **R.S. GARG v**

STATE OF U.P.[8] for the proposition that the respondents are precluded from supporting the impugned G.O. with reasons other than those contained in the impugned G.O. by way of counter-affidavits or oral submissions. They also relied on **STATE OF A.P. v. S.B. KOMARAIAH**[9] and **GOVERNMENT OF A.P. v. V. SUDARSANAM**[10], which were decided in the light of the judgment of the Supreme Court in **STATE OF A.P. v. AUDIKESAVA REDDY** (supra), and argued that in view of these judgments of the Division Bench, the petitioners are entitled to relief in terms of the prayer made by them. Another argument of the learned counsel is that the petitioners are entitled to the benefits under G.O.Ms.No.733, dated 31.10.1988 and that they are entitled to the same benefits as any other holder of excess vacant land is entitled to as they are in actual physical possession even as on date, irrespective of whether the Act became applicable on 17.02.1976 or 29.09.1980. They relied on G.O.Ms.No.455 and contended that it is only after the owners i.e. petitioners in W.P.No.4141 of 2006 and their purchasers i.e. petitioners in W.P.Nos.4121 of 2006 and 4144 of 2006 are given the benefits under G.O.Ms.Nos.733 and 445 respectively that the power of allotment under Section 23 of the 1976 Act can be exercised by the State. Shri Rajendra Chowdary lastly argued that that G.O.Ms.No.161 is a result of the arbitrary exercise of executive fiat of the State Government and, therefore, the same is per se mala fide and is liable to be declared ultra vires the powers of the State Government under Section 23 of the 1976 Act. In support of this argument, Shri Chowdary relied on the judgments of the Supreme Court in **C.S. ROWJEE v ANDHRA PRADESH ROAD TRANSPORT CORPORATION**[11],

S.PRATAP SINGH v STATE OF PUNJAB[12] and **EXPRESS NEWSPAPERS PRIVATE LIMITED v UNION OF INDIA**[13].

Shri D. Prakash Reddy argued that in view of the statement made by the learned Advocate General in the earlier writ petitions that the matter may be remanded for deciding the question whether on the appointed day the land was 'vacant land' situated within the urban agglomeration and the same was covered by the master plan or not, the matter may now be remanded for fresh consideration by the State.

Shri B. Adinarayana Rao heavily relied on the judgment and decree passed by District Court, Ranga Reddy in O.S.No.71 of 2001 and argued that once the suit filed by District Collector, Ranga Reddy on behalf of the government for grant of a declaration that the disputed land is government land, has been dismissed, the government cannot lay claim over the land and, in any case, G.O.Ms.No.733 read with G.O.Ms.No.239, G.O.Ms.Nos.455/456 are applicable to this case even if the disputed land is held to be 'vacant land', and the State Government is required to reconsider the whole issue in terms of the said Government Orders.

Shri G. Vahanvati, learned Solicitor General of India appearing for Andhra Industrial Infrastructure Corporation Limited and Shri C.V. Mohan Reddy, learned Advocate General referred to the relief claimed in Writ Petition Nos.18385 of 1993 and 238 of 1994 and argued that as a consequence of setting aside of the judgment of the Division Bench, which had approved orders passed by the learned Single Judge, the proceedings taken under the 1976 Act starting from filing of statements under Section 6(1) on 06.09.1976 and 25.07.1997 and culminating in subsequent orders of the competent authority under Sections 8(4), 9, 10(1), 10(2), 10(3), 10(5) and 10(6) will be deemed to have been

upheld and have attained finality. According to the learned counsel, in view of the judgment of the Supreme Court in **STATE OF A.P. v. AUDIKESAVA REDDY** (supra), it is not open to the petitioners to seek reopening of the proceedings under the 1976 Act. The learned Solicitor General referred to and relied on the judgments of the Supreme Court in **M/S. KESHO RAM AND OTHERS v. UNION OF INDIA**[14], **BALLABH DAS MATHURDAS v. MUNICIPAL COMMITTEE, MALAKPUR**[15], **KAUSALYA DEVI BOGRA v. LAND ACQUISITION COLLECTOR**[16], **DIRECTOR OF SETTLEMENTS, A.P. v. M.R. APPARAO**[17] and **ANIL KUMAR NEOTIA v. UNION OF INDIA**[18] in support of his contention that once the decision of the High Court is set aside by the Supreme Court, it is not open to contend that a particular aspect or argument was not considered by the Supreme Court. Learned Solicitor General also relied on the judgment of the Apex Court in **KUNHAYAMMED** (supra) in support of his contention that once the Supreme Court granted leave in a Special Leave Petition and renders its decision in appeal, the doctrine of merger is attracted and the order of the High Court gets merged in the decision of the Supreme Court and ceases to exist. Learned Advocate General argued that the land owners are bound by the declarations filed by them under the 1973 Act wherein the disputed land was described as non-agricultural. He submitted that even though the Tribunal rejected the said plea in the first instance, after remand by the Land Reforms Appellate Tribunal, the Tribunal through its order dated 10.11.1987 held that the land in dispute was not an agricultural land and that finding is binding on the declarants as also the society and the private individuals who purchased the land from them. Learned

Advocate General further argued that in view of the dismissal of the applications for exemption filed by the society under Section 7 of the A.P. Vacant Land in Urban Areas (Prohibition and Alienation) Act, 1972 and under Section 20 of the 1976 Act and the orders of rejection having been upheld, neither the original owners nor the purchasers can seek a direction for reconsideration of their applications for exemption or grant of benefit in terms of G.O.Ms.Nos.289 and 455/456.

Learned Solicitor General pointed out that the land owners in their declarations submitted before the authorities under the 1976 Act described the disputed land as “vacant land” and also “grazing land”, which is excluded from the definition of agricultural land under the 1973 Act and, therefore, they cannot now turn round and contend that up to the date of revised master plan the disputed land should be treated as agricultural land. He argued that the alleged mistake in filing the statements under the 1976 Act, as pleaded in the present writ petitions by the original land owners, was wholly misconceived as they were conscious of the fact that the disputed land was ‘vacant land’ as mentioned in their own statements. He further argued that the rejection of the claim for exemption by the society having attained its finality and the land having been vested in the State, which was subsequently allotted to Andhra Pradesh Industrial Infrastructure Corporation Limited, the original land owners or the alleged subsequent purchasers have no right to claim exemption. Another contention urged by the learned Solicitor General is that the original owners are not entitled to relief under Article 226 of the Constitution because they have deliberately suppressed facts relating to agreement executed in favour of the society for sale of the land.

None appeared for petitioner viz., Chanakyapuri Cooperative Housing Society Limited in W.P.No.5776 of 2004. However, after arguments were closed and judgment reserved, written submissions were filed on their behalf. In the brief written submissions filed by the society, it is submitted that the society adopts the oral submissions made by the counsel for other writ petitioners and that in the event of filing of written submissions on behalf of other petitioners, the society would also adopt the same. It is apt to extract one paragraph from the written submissions of the society herein below:

> "It is submitted that though the petitioner society has lost their case in all the forums, the possession of the land continues to be with the writ petitioner society. There is a procedure prescribed under Sections 10(5) and (6) of the Act 33/76, which is yet to be followed by the respondents, whereby the writ petitioner society is entitled for the benefit under the above said G.O.Ms.No.455 dated 29.07.2002."

We have considered the respective submissions. From the rival contentions, the following points arise for consideration in this batch of writ petitions:

1) What is the effect of the judgments of the Supreme Court in **STATE OF A.P. v. AUDIKESAVA REDDY** (supra) and findings recorded by the learned Single Judge in Writ Petition No.18385 of 1993 and 238 of 1994 and by the Division Bench in Writ Appeal Nos.918 and 1220 of 1994 can be relied for claiming relief despite the fact that the judgment of the Division Bench has been reversed by the Supreme Court?
2) Whether the claim of the petitioners for determination of the surplus area case is legally tenable and whether respondent Nos.1 to 3 are under an obligation to re-compute the excess land?
3) Whether in the event of fresh determination of excess

land, the petitioners are entitled to the benefit of G.O.Ms.No.733 dated 31.10.1988 as clarified in G.O.Ms. No.289 dated 01.06.1989 and G.O.Ms.Nos.455/456 dated 29.07.2002?

4) Whether the declarants have approached this Court with clean hands in filing the present writ petitions, and

5) Whether the petitioners are entitled to any relief in these writ petitions?

Re: Point No.1:-

As noted hereinabove, Writ Petition Nos.18385 of 1993 and 238 of 1994 were filed by the persons who claimed to have purchased land from the land owners. They contended that the disputed land was an agricultural land as on 17.02.1976 when the 1976 Act came into force and, therefore, as per the law laid down by the Supreme Court in **ATHIA MOHAMMADI BEGUM**[1] case, the date of coming into force of the 1976 Act being the relevant date, the proceedings initiated on the basis of the revised master plan, which came into force in the year 1980 were not sustainable. The learned Single Judge allowed W.P.No.18385 of 1993 by relying on the judgment in **ATHIA MOHAMMADI BEGUM**'s case (supra) and order dated 26-8-1993 passed by the learned Single Judge in Writ Petition Nos.3920 of 1983 and 4502 of 1984, which were decided on the basis of the judgment in **ATHIA MOHAMMADI BEGUM**'s case (supra). Later on, Writ Petition No.238 of 1994 filed by another set of purchasers was also allowed by a learned Single Judge on 06.10.1994. In W.A.No.918 of 1994 filed by the State of A.P. and others against the judgment in W.P.No.18385 of 1993, the learned Additional Advocate General appearing for the State and others submitted that as on the date of coming into force of the 1976 Act, the land in dispute was situated in an urban agglomeration and it was vacant and urban land included in the master plan of the

Hyderabad city. It was further submitted that when once the said land is included in the master plan, whether it is vacant or agricultural land, the provisions of the 1976 Act are applicable and that any transfer of such land is illegal. It was specifically pleaded that the land in question is situated within

5 kms of peripheral area of Hyderabad (West), coming within the master plan and that the same was not considered by the learned Single Judge. The Division Bench, however, rejected the contentions put forth on behalf of the State and others and held that as on the date of coming into force of the 1976 Act, the land in question was an agricultural land and not vacant or urban land falling outside the urban agglomeration and the master plan of the Hyderabad city. (During the course of hearing, Sri Rajendra Chowdary, learned Senior Counsel appearing for the petitioners in Writ Petition No.4121 of 2006 fairly stated that the finding to the effect that the land was situated outside the urban agglomeration was not correct. He stated that the land was within the urban agglomeration, but outside the master plan as it existed when the Act came into force). At this juncture, it is apposite to observe that the Division Bench recorded the aforementioned finding presumably because its attention was not drawn to the material documents relating to the proceedings held under the 1973 Act and the statements made by the declarants before the authorities under the 1976 Act.

As already mentioned earlier, on the plea raised by the declarants, the Land Reforms Tribunal under the 1973 Act vide its order dated 10.11.1987 ordered for re-conveyance of

Ac.99.17 cts. of land treating the entire land in Sy.No.83 held by the declarants as non-agricultural land. It is, thus, evident that the

declarants approached the authorities under the 1973 Act with the plea that the disputed land was not an agricultural land and the said plea was accepted by the Tribunal. Further, in the statements filed in Form-1 under Section 6(1) of the 1976 Act on behalf of the declarants on 16.01.1976 and 27.07.1977, the entire disputed land was described as "vacant land" (see pages 147, 159, 171, 183, 195, 207, 219, 231, 243, 255, 267 and 279 of the material papers filed by the learned Advocate General). On the basis of the declarants' own declarations, draft statements were prepared and the proceedings under the 1976 Act were finalized culminating in the final statements under Sections 10(3) and 10(6) of the 1976 Act. It is, therefore, no longer open to the land owners to claim that the nature of the land was agricultural.

In **STATE OF A.P. v. AUDIKESAVA REDDY** (supra), the Supreme Court allowed the appeals filed by the State of Andhra Pradesh and set aside the judgment of the Division Bench in Writ Appeal Nos.918 and 1220 of 1994, which, as mentioned above, confirmed the order passed by the learned Single Judge in Writ Petition Nos.18385 of 1993 and 238 of 1994. It is true that the Supreme Court did not go into the factual matrix of each case, but the consequence of reversal of the judgment of this Court is that the findings recorded by the Division Bench have become otiose and the same can no longer be relied for seeking a direction for re-opening of the surplus area case.

In **M/S. KESHO RAM AND CO. v UNION OF INDIA**[19], the Supreme Court considered the challenge made to a notification issued by Chief Commissioner, Union Territory, Chandigarh, granting exemption from Section 13 of the East Punjab Urban Rent Restriction

Act, 1949 to buildings constructed in the urban area of Chandigarh for a period of five years. When the landlords of certain buildings filed suits for eviction in the Civil Courts against the tenants, some of the tenants filed writ petitions under Article 226 of the Constitution of India before the High Court of Punjab and Haryana challenging the jurisdiction of the Civil Court to proceed with the suits or to pass decree of eviction against them on the ground that on the expiry of five years period of exemption, Section 13 of the said Act became applicable and the Civil Courts ceased to have jurisdiction. The High Court repelled the tenants' contentions and dismissed their petitions. Some tenants filed civil appeals challenging the correctness of the order of the High Court, while some other tenants filed petitions under Article 32 of the Constitution of India challenging the validity of the proceedings taken by the landlords for their eviction. In the said batch of cases, validity of Section 3 of East Punjab Urban Rent Restriction Act, 1949 to which the power of granting exemption was traceable was also challenged. The Supreme Court took note of the fact that Section 3 of the said Act was subjected to challenges on earlier two occasions and on both occasions the validity of Section 3 was upheld in the year 1972 and 1984. In that context, the Supreme Court held as follows:

> "In our opinion the petitions filed by such tenants are not maintainable as the same are barred by principles of res judicata.
>
> Once the petitioners challenge the validity of the impugned notification dated 24.09.1974 in earlier proceedings they ought to have raised all the grounds which could have been raised impugning the validity of Section 3 and the notification. If they failed to raise a ground in the earlier petition, they cannot raise the ground now in the present proceedings. Finality in litigation and public policy both require that a litigant should not be permitted to challenge validity of the provisions of

the Act or notification at different times on different grounds. Once petitioners' challenge to Section 3 and the impugned notification was considered by the Court and the validity of the same was upheld, it must be presumed that all grounds which could validly be raised were raised and considered by the Court. Learned counsel for the petitioners urged that the questions, which are being raised in the present proceedings were neither raised nor considered by this Court in **Punjab Tin Supply Company** case, therefore, it is open to them to question the validity of Section 3 and the Notification dated 24.09.1974. This submission is contrary to the principles of *res judicat* and it further ignores the binding effect on the decision of this Court under Article 141 of the Constitution. The binding effect of a decision of this Court does not depend upon whether a particular argument was considered or not, provided the point with reference to which the argument is advanced subsequently was actually decided in the earlier decision (see **Smt. Somavanti v State of Punjab, T.Govindaraja Muddaliar v State of Tamil Nadu,** and **Anil Kumar Neotia v Union of India**. It is therefore no longer open to the petitioners – tenants to challenge the validity of Section 3 of the Act and the impugned notification dated 24.09.1974 on the ground that some points had not been urged or considered in **Punjab Tin Supply Company** case. On the principles of *res judicata* and also in view of Article 141 of the Constitution, the law declared by this Court in **Punjab Tin Supply Company** case is binding on the petitioners."

In **SMT. KAUSALYA DEVI BOGRA v. LAND ACQUISITION OFFICER, AURANGABAD**[20], it was held that if the Supreme Court in exercise of its appellate power under Article 133 sets aside the judgment of the High Court and remands the matter to the High Court, that judgment of the High Court for all intents and purposes would become non-existent and, in no case, the High Court can resurrect its earlier judgment to life which had been rendered lifeless by the Supreme Court.

In **DIRECTOR OF SETTLEMENTS, A.P., v. M.R.APPA RAO**[21], the Supreme Court held that the law, which will be binding under Article 141 of the Constitution to the extent of all observations on points raised and decided by the Court, in a given case, the decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court. It was further held that a judgment of the High Court which fails to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity.

By applying the ratio of the aforementioned judgments to the facts of these cases, we hold that in view of the judgment of the Supreme Court in **STATE OF A.P. v. AUDIKESAVA REDDY** (supra), whereby the judgment of the Division Bench in Writ Appeal Nos.918 and 1220 of 1994 was reversed, the finding recorded by the learned Single Judge, which was confirmed by the Division Bench that the land in dispute became urban land only with effect from 22.09.1980 when the revised master plan came into force, will be deemed to have become non-existent and the same cannot be relied by the petitioners for re-opening of the ceiling case. It is not open to the parties to draw their own inference by purporting to predicate on the intention of the superior Court in not adverting to certain aspects contained in the judgments under appeals and rely on them in the subsequent round of litigation. The judgment in **STATE OF A.P. v. AUDIKESAVA REDDY** (supra), in our view, has not left any question open consequent on the declaration of law made therein. In the context of the reliefs claimed by

the petitioners, which included the relief of declaration that all the proceedings taken and orders passed by the authorities under the 1976 Act are null and void, the reversal of the judgments of this Court in which such reliefs were granted without any further rider clearly indicates that the Supreme Court never wanted the issues to be reopened again and again. If the Supreme Court wanted the matters to be considered afresh, it would have given appropriate directions in **STATE OF A.P. v. AUDIKESAVA REDDY** (supra). A reading of the judgment does not indicate that the petitioners made any attempt to request the Supreme Court to leave any issue open for the authorities to consider under the 1976 Act in the light of the law declared by it. In the face of the unqualified reversal of the judgments of this Court, we are of the firm view that it is not open to the petitioners to seek reopening of the proceedings under the 1976 Act which ended as far back as 19.07.1993 with the passing of the orders under Section 10 (6) of the Act.

DOCTRINE OF MERGER:-

The Courts held that the doctrine of merger is neither a doctrine of constitutional law nor a doctrine statutorily recognized. This doctrine is founded on principles of propriety. In **CTI v M/s. AMRITLAL BHOGILAL & CO.**[22], it was held by the Supreme Court that if an appeal is provided against the order passed by the Tribunal, the decision of the appellate authority is the operative decision in law, whether it modifies or affirms the decision of the lower authority and the decision of the original authority merges in the appeal decision. It was further held that it is the appellate decision alone which subsists, is operative and capable of enforcement. The said ratio was referred

to in a number of later judgments including a Constitution Bench judgment of the Apex Court in **S.S. RATHORE v STATE OF MADHYA PRADESH**[23]. In **KUNHAYAMMED** (supra), the Supreme Court reviewed the entire case law of this doctrine and held as under:

> "The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior Court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior Court has disposed of the lis before it either way - whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior Court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the Court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view."
>
> (Emphasis supplied)

The argument of learned counsel for the petitioners that the doctrine of merger is not applicable to the present cases because in **STATE OF A.P. v. AUDIKESAVA REDDY** (supra), the Supreme Court did not disturb the finding recorded by this Court with regard to the nature of land prior to the date of the revised master plan i.e. 29-9-1980 is without substance. It is not as if the findings on facts contained in the earlier judgments of this Court were not the subject matter of the civil appeals, which were decided by the Supreme Court. What is ultimately relevant is the final decision of the superior Court and not the reasons in support of that decision. When the Supreme Court has

allowed the civil appeals, the natural corollary and inevitable consequence of the decision is the reversal of the judgments of the High Court in its entirety.

As already noted hereinbefore, the High Court granted several reliefs including the one which declared all the orders passed under the 1976 Act as null and void and unenforceable. With the allowing of the civil appeals, the reliefs which were granted to the petitioners were denied to them and the final notification issued under Section 10(6), not to speak of all the earlier orders passed at different stages preceding the said final declaration, received approval of the Supreme Court. It is this final decision of the Supreme Court, which alone is operative governing the subject matter viz. determination of the excess land as done under various orders of the Hyderabad Urban Development Authority. Therefore, the doctrine of merger applies with all its vigor to these cases, and the surplus area case of the land owners cannot be reopened.

Learned counsel for the petitioners, however, laid emphasis on para 15 of the judgment in **STATE OF A.P. V. AUDIKESAVA REDDY** (supra) and contended that the Supreme Court has left open the questions raised by them in the present writ petitions to be decided. Though at the first blush this argument looked attractive, on a deeper scrutiny of the contents of the said para, we find no force in the said contention. The expression “person” mentioned in para 15, in our opinion, is not referable to the parties, who are either declarants or those claiming under them such as the purchasers or transferees, but is referable to the third parties. The reason for our coming to this conclusion is that, had the Supreme Court intended that, even in respect of the declarations, which were subject matter of the appeals

before it, the authorities should reopen them, it would have given such a direction in the judgment itself.

In para 17, which is the concluding paragraph wherein certain civil appeals including the two civil appeals concerned with this batch of cases were allowed, the Supreme Court has not made the result of allowing the civil appeals subject to the observations made in para 15. The generic observations made in para 15, in our considered view, cannot have the effect of setting aside the various orders passed under the 1976 Act including the notification issued under Section 10(6). Reading paragraph 15 of the judgment in the manner pleaded by the petitioners would lead to a serious contradiction between the said para and para 17 of the judgment, which contains the final decision viz. allowing of the relevant civil appeals.

Re: Point Nos. 2 to 5:-

Since these points are interrelated, they are dealt with together. The sequence of events narrated hereinabove discloses that the declarants through their GPA entered into an agreement of sale on 09.08.1974 with the society for alienation of
16,18,800 square meters even before the commencement of the 1976 Act. The said society claimed that the physical possession of an extent of Acs.400-00 out of Acs.510-35 guntas of land was handed over to it in the year 1975 and that the layout was sanctioned by the then Grampanchayat, Serilingampally on 07.11.1975. The declarants initially filed their declarations under the 1973 Act on 11.04.1975 and on 23.11.1976 under the provisions of the 1976 Act for the entire extent of land including the land, which was subjected to the provisions of the 1973 Act. Acting on the said declarations, a draft statement was issued on

1-7-1977 under Section 8(1). Notice under Section 8(3) of the Act calling for objections was issued to the declarants on 11.11.1977, but the declarants who received the notice did not file any objections to the said draft statement. They did not do so apparently because they had entered into an agreement with the society. The final statement was, therefore, made by the authorities under Section 9 of the Act on 25.01.1980 declaring that ten of the declarants together hold the total surplus land of 18,94,472 square meters.

While the proceedings under the 1976 Act were pending, the GPA of the declarants submitted proposals to the government on 14.02.1978 through Commissioner of Land Reforms and Urban Land Ceiling for grant of exemption under Section 20(1)(a) of the Act to an extent of 16,18,800 square meters to enable them to alienate the said extent in favour of the society. While the said application was pending, the notification under Section 10(1) and declaration under Section 10(3) of the Act were published in A.P. Gazette on 16.01.1980 and 24.01.1981 respectively and the State Government issued G.O.Ms.No.5013, Revenue, dated 19.12.1980 allotting the surplus land of 18,94,472 square meters to Hyderabad Urban Development Authority. On 21.02.1981, the GPA's request for exemption to alienate the land in favour of the society was rejected, which, as mentioned earlier, was challenged unsuccessfully by the society in the High Court and in the Supreme Court.

As also noted hereinabove, the declarants approached the Land Reforms Tribunal under the 1973 Act and succeeded in taking back the lands earlier taken over under the 1973 Act on the ground that the land in dispute was not an 'agricultural land', but 'vacant land' under the 1976 Act. The proceedings under the 1976 Act ended with the

publication of the declaration under Section 10(6) of the Act on 09.07.1993. The declarants have never challenged any of these orders, which have become final. It is only the so-called purchasers and the society, who separately challenged the proceedings under the 1976 Act. The declarants were not parties to the proceedings before this Court and the Supreme Court in the earlier round of litigation. They have, thus, allowed the proceedings under the 1976 Act become final. It is only after the decision in **STATE OF A.P. v. AUDIKESAVA REDDY** (supra), they approached this Court by filing W.P.No.4141 of 2006.

In the face of these facts, we are unable to see how the declarants can approach this Court by challenging the proceedings under the 1976 Act, which had become final qua them as early as in 1993. Having filed the declarations under the 1976 Act, got the proceedings under the 1973 Act dropped by convincing the Land Reforms Tribunal that it was not an agricultural land as on 17.02.1976 when the 1976 Act came into force, having made the authorities under the 1976 Act to finalize the proceedings under the 1976 Act to determine the surplus land and allowing those proceedings to become final, the declarants cannot turn round and challenge the orders passed under the 1976 Act and that too after a gap of 13 years, by making a plea that they had filed declaration under the 1976 Act under a mistaken impression and it remained unsubstantiated. At the cost of repetition, we deem it proper to observe that they did not question the proceedings held under the 1976 Act or order dated 21-2-1981 passed by the government rejecting their application for exemption for alienation of the land in favour of the society. Therefore, the declarants will be deemed to have been acquiesced in the proceedings held

under the 1976 Act and they, as also the petitioners of other writ petitions, are not entitled to invoke the discretionary jurisdiction of this Court under Article 226 of the Constitution of India.

WHETHER THE JUDGMENTS IN S.B. KOMARAIAH AND V.SUDARSANAM APPLY TO THE PRESENT CASES?

Learned counsel for the petitioners contended that in **B.KOMARAIAH** (supra) and **V.SUDARSANAM** (supra), Division Benches of this Court, while reversing the judgments of the learned Single Judges following **STATE OF A.P. v. AUDIKESAVA REDDY** (supra), directed the authorities under the 1976 Act to decide the holdings and entitlements of the declarants therein by taking 29.09.1980 as the relevant date. According to the learned counsel, the ratio in these two judgments squarely applies to the present cases. In **B.KOMARAIAH** (supra), the declarants filed appeal under Section 33 of the 1976 Act questioning the statement prepared under Section 9 of the Act. They have then filed W.P.No.3219 of 1995 questioning the order dated 22.01.1991 of the appellate authority rejecting the appeal. The said writ petition was allowed by a learned Single Judge of this Court by following the ratio in **ATHIA MOHAMMADI BEGUM** (supra). The State filed W.A.No.512 of 1998. By the time the said writ appeal was heard and disposed of, **ATHIA MOHAMMADI BEGUM** (supra) was reversed in **STATE OF A.P. v. AUDIKESAVA REDDY** (supra) to the extent it related to the date of commencement of the Act. In view of the changed legal position, the Division Bench modified the judgment of the learned Single Judge and held that the land of the declarants shall be re-assessed taking 29.09.1980 i.e. the date on which the master plan came into force as the relevant date. The Division Bench set aside the final statement made under Section 8(4) and the order of the appellate authority confirming the final statement, before granting

such a direction.

V.SUDARSANAM's case (supra) also presented almost similar facts and was in fact disposed of by the same Division Bench following the judgment in **B.KOMARAIAH** (supra). While giving similar directions to re-compute the holdings of the declarants therein, one of the relief granted by the Division Bench was as under:

> "2. The orders that are passed by the special officer and competent authority under Section 8(4) and other further proceedings which are challenged in the writ petitions are also set aside." (from page 239 of material papers in WP 4121 of 2006).

In our opinion, the aforementioned two judgments are of no help to the cause of the petitioners because, the judgments of the Division Bench were reversed by the Supreme Court in **STATE OF A.P. v. AUDIKESAVA REDDY** (supra) and thereby orders made under the 1976 Act have become final.

CONTENTIONS BASED ON G.O.MS.NO.733, DATED 31.10.1988, G.O.MS.NO.217, DATED 18.04.2000, G.O.MS.NO.455, DATED 29.07.2002 AND G.O.MS.NO.456, DATED 29.07.2002.

Learned counsel for the petitioners contended that the declarants are entitled to the benefit of G.O.Ms.No.733 as amended in G.O.Ms.No.217, which provided for grant of exemption of vacant land to a maximum extent of Acs.5-00 situated within the peripheral areas as specified in column 3 of Schedule-I under the 1976 Act from the provision of Chapter-III of the said Act. In G.O.Ms.No.217, which amended G.O.Ms.No.733, it is provided that such exemption shall not apply to surplus lands taken possession from the declarants under Section 10(5) and 10(6) of the 1976 Act as on 31.10.1988. Learned

counsel submitted that possession of the surplus land was taken after 31.10.1988, and, therefore, the benefit of exemption under G.O.Ms.No.733 is still available to the declarants.

From the facts mentioned above, it is clear that on 14.02.1978, the GPA of the declarants sought for exemption of the excess land for alienation in favour of the society in terms of the guidelines issued in G.O.Ms.No.136, Revenue, dated 03.03.1977. As the surplus land of 18,94,472 square meters was allotted to Hyderabad Urban Development Authority through G.O.Ms.No.5013 Revenue dated 19.12.1980, the said exemption application was rejected on 21.02.1981. The declarants did not challenge the said order of rejection till the filing of writ petition in 2006, and, at this belated stage, we do not find any justification to entertain their plea. It is no doubt true that the amendment made in G.O.Ms.No.217 vide G.O.Ms.No.733 dated 31-10-1988 is applicable only in the cases in which the possession of the land had been taken over by the government under Section 10 (5) and 10 (6) and possession in this case was taken after 31-10-1988. The declarants cannot avail of the said benefit for the simple reason that, even according to them, they were not in possession as on 31-10-1988. As a matter of fact, there are conflicting versions regarding possession of the land. On one hand, the society has claimed that in furtherance of agreement dated
9-8-1974 entered with the GPA of the declarants, it is in possession of the land. On the other hand, the purchasers, who are petitioners in W.P.Nos.4121 and 4144 of 2006, claim that they have purchased the property from the declarants in pursuance of G.O.Ms.No.733. However, the fact remains that the declarants' were not in possession of the property. In a given case, the benefit under G.O.Ms.No.733 may

be available if the declarants were in possession up to 31.10.1988 and possession was taken by the Government subsequent thereto, but, in our considered view, G.O.Ms.No.217 cannot be interpreted as entitling the declarants to claim benefit of exemption even in cases where they were not in possession as on 31-10-1988. From Annexure 29 filed on behalf of the State Government, it is clear that possession of the excess land was taken under a panchanama on 20.07.1993 and the same was handed over to the Mandal Revenue Officer, Sherlingampally. Even prior to that, the said land was allotted to Hyderabad Urban Development Authority vide G.O.Ms.No.5013 dated 19.12.1980. The declarants have neither challenged G.O.Ms.No.5013 nor the memo of rejection dated 21.02.1981 for exemption. In this factual scenario, the declarants cannot be allowed to take the benefit of G.O.Ms.No.733 since this is not merely a case where the declarants were dispossessed, but the property was transferred initially in favour of Hyderabad Urban Development Authority and later to A.P. Industrial Infrastructure Corporation, Hyderabad for utilizing the same to set up Integrated I.T. Park Project. Even assuming that there is any scope for claiming the benefit under G.O.Ms.No.733 as modified in G.O.Ms.No.217, the conduct of the declarants disables them from claiming any such benefit. They have been varying their stands from time to time. They have not explained as to what happened to the agreement of sale in favour of the society. They have not given any details as to when the land was sold to the third parties. They have not produced copies of any such sale deeds in their writ petitions to substantiate their contention that the sale deeds were executed invoking the exemption under G.O.Ms.No.733 as pleaded by them in the writ petition. We are, therefore, of the view that the declarants have taken shelter under G.O.Ms.No.733 as a desperate attempt to some

how get back a part of the property from out of the excess land. Their conduct disentitles them from making any such claim based on G.O.Ms.No.733.

As regards the purchasers, who are petitioners in W.P.Nos.4144 and 4121 of 2006, they cannot claim the benefit of the policy contained under G.O.Ms.No.733, dated 31.10.1988 as held by the Division Bench of this Court to which one of us is a party (the Hon'ble the Chief Justice) in **PARCHURI RATNAKAR RAO v STATE OF A.P.**[24]**.**

Point Nos. 2 to 4 are answered accordingly.

MALA FIDES:-

The plea of mala fides raised by the petitioners is contained in para 3 (g) of the affidavit filed in support of Writ Petition No.4121 of 2006, which is extracted below:

> "When the aforesaid appeals were pending before the Hon'ble Supreme Court, the respondent No.3 herein, in order to grab the land in question by one means or the other for the first time started claiming that the land is Government land and that the petitioners' predecessors-in-title had no title to the said land. The District Collector of Ranga Reddy District, the 3rd respondent herein purporting to exercise his suo moto powers under section 166-B of the Andhra Pradesh (Telangana Area) Land Revenue Act passed orders on 27.07.1998 directing the deletion of the names of land owners as pattedars from the pattedar and possessor columns of all the pahanies from the year 1951 onwards and to treat the same as "sarkari poramboke" i.e., Government land. It would, thus, be seen that when the state chose to proceed against the petitioners under the Ceiling Act, it was only on the basis that the petitioners and their predecessors-in-title were the owners of the land, whereas the basis for exercising the power under the aforesaid Land Revenue Act, was that the ownership of the land was with the

Government. It is, therefore, manifestly clear that the attempt is to grab the land by one means or the other. Aggrieved by the same, W.P.No.27622 of 1998 was filed before this Hon'ble Court questioning the exercise of the power by the 3rd respondent under the aforesaid Land Revenue Act and for quashing the aforesaid order dated 27.07.1998. The said writ petition No.27622 of 1998 was allowed by a Division Bench of this Hon'ble Court by judgment dated 13.10.1998 and a true copy of the same is filed herewith as Ex.P-7. The petitioners crave leave of this Hon'ble Court to rely on the said judgment dated 13th October, 1998 at the time of the hearing of this writ petition."

The averments in the afore-extracted para in the counter, even taken on their face value do not have any nexus with the main issues raised in the writ petitions viz., whether the proceedings already finalized under the 1976 Act are liable to be reopened or not? The 3rd respondent's action in exercising his suo motu powers under Section 166(B) of the A.P. (Telangana Area) Land Revenue Act, 1317 F was on the petitioners' own showing a subject matter of writ petition and the petitioners succeeded therein. There is, therefore, no need to probe further into the allegations of mala fides made against the 3rd respondent. However, we may point out that except making vague statement that certain acts of the 3rd respondent were done with an intention to grab the land, the petitioners failed to produce sufficient material to convince the Court about the veracity of the averments made in the affidavit.

That apart, it is settled law that the burden of proof of mala fides is on the person making the allegation since the presumption is in favour of the administration that it exercises its power in good faith and for public benefit. In **E.P.ROYAPPA v STATE OF**

TAMIL NADU[25], it was held that the burden of establishing mala fides is very heavy on a person who alleged it. The allegations of mala fides are often more easily made than proved and that very seriousness of such allegations demand proof of a higher order of credibility.

Besides the fact that the foundation to establish mala fides is singularly lacking in the affidavit of the petitioners in W.P.No.4121 of 2006, the person, who held the office of the 3rd respondent at the relevant time has not been made a party, thereby denying him an opportunity of meeting the allegations made against him. The incumbent of the 3rd respondent holding the responsible public office cannot be presumed to act with malice, unless the motive for such an act is alleged and strong material is placed in support of the said allegation. The petitioners failed on both these counts. The judgments of the Apex Court in **C.S.ROWJEE** (supra)**, S.PRATAP SINGH** (supra) and **EXPRESS NEWSPAPERS PRIVATE LIMITED** (supra) are of no avail to the petitioners, since in all those cases specific allegations of

mala fides were made against some of the respondents therein giving material particulars, which the respondents failed to deny. The present cases, in which the aforementioned bald allegations are made, therefore, stand on a totally different pedestal from the said cases. At any rate, as already pointed out by us, the act alleged against the 3rd respondent does not in any manner affect the proceedings finalized under the 1976 Act, which received the approval of the Supreme Court in **STATE OF A.P. v. AUDIKESAVA REDDY** (supra).

-

-

G.O.Ms.No. 455 AND G.O.Ms.No.456 DATED 29.07.2002

Vide G.O.Ms.No.455 dated 29-7-2002, provision has been made for allotment of surplus land subject to the conditions enumerated in Clause 4 (e). That clause reads as under:

> "(e) Allotment under these orders shall be confined to:
>
> (i) Excess land in the possession of occupier, (other than the excess land holder or his successors) where such possession is evidenced by a registered document of purchase from the excess landholder or person claiming through him/her regardless of the fact of such land being covered by a structure or not.
>
> (ii) Excess land in the possession of occupier, (other than the excess landholder or his successors) on which there is already a structure, though the possession is not supported by any registered document of purchase. "Structure" for the purpose of this G.O. shall include any construction which is constructed with walls and covered with a roof of RCC/Tiles/A.C. Sheets/Zinc Sheets or tubular structure but does not include a hut or a shed without walls. In Guntur and Vijayawada and Visakhapatnam agglomerations structures with walls and covered with roof of Palmyra leaves traditionally may be considered as structure."

Apart from the afore-extracted clause, various other clauses of the G.O. lay emphasis on the occupation/possession of the land by the person seeking allotment. A reading of this G.O. thus unequivocally indicates that occupation/possession is *sine qua non* for the allotment of the surplus land.

In view of our findings regarding taking over of possession by the State Government under a panchanama on 20/7/1993 and transfer of the property initially to Hyderabad Urban Development Authority and later to A.P. Industrial Infrastructure Corporation, the contention of the

purchasers that they are in occupation/possession of the land of their respective plots purchased by them cannot be accepted and consequently the benefit of G.O.Ms.No.455, dated 29.7.2002 is not available to the purchasers who are petitioners in W.P.No.4121 of 2006 and W.P.No.4144 of 2006.

As regards G.O.Ms.No.456, dated 29.7.2002, which applies to the declarants of excess land, para 3 (b) of the said G.O. reads as under:

> "3 (b): These orders will not apply to cases where possession of such excess land has already been taken over by Government prior to these orders and (i) allotted already by the Government under Section 23 of the Act, (ii) handed over to the Urban Development Authorities for the purpose of public auction in terms of G.O.Ms.No.166, Rev. (UC.1) Dept., dt.3-3-2001, (iii) decided to be retained by the Government."

As we have already found that the land has been transferred in favour of the Andhra Pradesh Industrial Infrastructure Corporation, the declarants cannot claim the benefit under G.O.Ms.No.456, dated 29.7.2002 in view of the afore-extracted clause. Apart from this, both the said G.Os. contain a clause, which vests discretion in the government to refuse or reject any case for allotment of excess land even though it otherwise satisfies all the conditions prescribed in this order if such allotment of excess land is not public interest or if such land is required for public purpose. The petitioners, therefore, cannot claim absolute right for allotment of the excess land even if they satisfy all the conditions stipulated in the two G.Os.

Having regard to the facts and circumstances of these cases, we are of the considered view that these are not fit cases where they can invoke the benefit of the said G.Os. for both the reasons, namely, that they do not satisfy some of the conditions as already mentioned

hereinabove of the G.Os. and even the public interest does not warrant consideration of their claims for allotment at this belated stage.

Re: Point No.5:-

In view of the findings rendered on questions 1 to 4, we hold that the petitioners are not entitled to any relief in these writ petitions. Accordingly, all the writ petitions are dismissed with costs.

C.V.NAGARJUNA REDDY, J.

17th January, 2007

G.S.SINGHVI, C.J.

ES

L.R. copy to be marked.

---

[1] AIR 1993 SC 2465
[2] (2002) 1 SCC 227
[3] (2000) 6 SCC 359
[4] (1991) 4 SCC 139
[5] (2003) 6 SCC 697
[6] AIR 1978 SC 851
[7] (2006) 3 SCC 581
[8] (2006) 6 SCC 430
[9] 2002 (2) ALD 253 (DB)
[10] 2002 (3) ALD 236 (DB)
[11] AIR 1964 SC 962
[12] AIR 1964 SC 72
[13] 1986 (1) SCC 133
[14] (1989) 3 SCC 151
[15] (1970) 2 SCC 267
[16] (1984) 2 SCC 324

[17] (2002) 4 SCC 638

[18] (1988) 2 SCC 587

[19] (1989) 3 SCC 151

[20] (1984) 2 SCC 324

[21] (2002) 4 SCC 638

[22] AIR 1958 SC 868

[23] 1989 (4) SCC 582

[24] 2006 (5) ALD 132 (DB)

[25] AIR 1974 SC 555